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SUBJECT: CRISTINA TACKLES JUDICIAL REFORM: TRIAL BALLOON
FOR 2007 PRESIDENTIAL BID?

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Classified By: AMBASSADOR E. ANTHONY WAYNE FOR REASONS 1.4 (B) AND (D)

¶1. (C) Summary. In what many view as a trial balloon for Cristina Fernandez de Kirchner's bid for the presidency in 2007, the Senator and First Lady introduced a bill on November 9 that would gradually reduce the number of justices on the Argentine Supreme Court from nine to five. The seven justices currently on the bench will remain in place until two seats are vacated through retirement, death, or impeachment. Legal experts, leading editorialists, and several members of the Supreme Court have come out in public support of the bill, asserting that it would restore the Court's credibility and judicial independence. Others noted that the measure would build on Kirchner's earlier efforts to strengthen the judicial system by improving transparency in the nomination process. End Summary.

¶2. (U) On November 9, Senator and First Lady Cristina Fernandez de Kirchner introduced draft legislation that would gradually reduce the number of justices on the Argentine Supreme Court from nine to five. The seven justices currently on the bench will remain in place until two seats are vacated through retirement, death, or impeachment. The legislation would also reduce the number of justices needed to obtain a majority opinion from five to four until the court's size is reduced to five justices, when the number of justices needed to obtain a majority opinion will be reduced to three.

¶3. (U) Legal experts and leading editorialists support the bill, asserting that it would restore the Court's credibility and judicial independence as well as improve the Court's efficiency in reviewing cases. Others noted that the measure would build on Kirchner's earlier efforts to strengthen the judicial system, when he issued a decree that required the Executive Branch to present the names of candidates for the Supreme Court for public consideration. That decree further required that the Ministry of Justice publish the curriculum of the nominee on its website so that the media, NGOs, professional law associations, academia, human rights groups, and the public in general could debate the nominee's qualifications and merits. After a review period of three months, the President can then choose to present the nominee to the Argentine Senate for confirmation.

¶4. (U) Opposition figures, ex-Minister of Economy Roberto Lavagna and Propuesta Nacional (PRO) leader Mauricio Macri, however, have declined to comment on the measure. In the days leading up to the bill's announcement, two members of the Supreme Court, including the Court's President-designate Ricardo Lorenzetti publicly expressed their preference for reducing the Court from nine to seven justices. Since the unveiling of the new bill, however, Lorenzetti has come out in support of a five-member Supreme Court, stating that it helps to rebuild the judicial system's institutional

integrity.

¶5. (SBU) One of the bill's few critics, PRO Senator Jorge Vanossi, does not believe the bill addresses fundamental problems in the Supreme Court's structure; including whether the President of the Supreme Court should be elected by the Court's members as it is now, or named by the President of the Republic; the need to limit cases that the Supreme Court hears to those dealing with issues of constitutionality; and create additional higher-level Appellate Courts that would serve as the court of last resort in commercial, civil, criminal, and labor matters in order to reduce the Supreme Court's caseload. Despite Vanossi's criticism of the bill, he does not oppose reducing the number of justices on the Supreme Court to five.

¶6. (C) For the majority of Argentina's history, the Supreme Court has comprised of five justices; however, the Court's size has fluctuated between five and nine, particularly in recent history. In the 1990s, then-President Carlos Menem added four new justices to the Supreme Court, bringing the total to nine. This, plus the replacement of one of the pre-existing justices, enabled Menem to pack the Supreme Court and create an "automatic majority" that would consistently vote in favor of his executive decrees despite dubious constitutionality. Since Nestor Kirchner became President in 2003, all five members of this "automatic majority" have been removed or forced to resign. The voluntary retirement of another justice meant that Kirchner had the opportunity to name six new justices to the Supreme Court. However, he only named four. Analysts speculate that Kirchner did not fill the remaining two vacancies to avoid public perceptions that he, too, was packing the court, especially after his efforts to reform the Council of Magistrates in March met considerable public opposition, despite its eventual passage by Argentina's Congress.

¶7. (C) Comment: In the wake of the Misiones referendum on October 29, Kirchner seems to have drawn the lesson that the Argentine public will not tolerate any moves that would further undermine Argentina's already weak democratic institutions. The proposed judicial reform seems to be designed to answer the public's demands for stronger democratic institutions and quell accusations that Kirchner is trying to manipulate the judicial system. In addition, some believe that the Kirchners are using the bill to test the waters for a potential bid by Cristina Kirchner for the Presidency in 2007. As one leading editorialist noted, "Historically, Argentine society has tired of their presidents in the fifth or sixth year of their administration." As the Kirchners look to maintain power beyond 2007, if Cristina can demonstrate her ability to win public support for "proyecto K", it just may be the First Lady we see leading the Peronist ticket in October 2007.

WAYNE